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**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE****Working Party No. 2 on Competition and Regulation****Independent Sector Regulators – Note by Croatia**

2 December 2019

This document reproduces a written contribution from Croatia submitted for Item 3 of the 68th OECD Working Party 2 meeting on 2 December 2019.
More documents related to this discussion can be found at
<http://www.oecd.org/daf/competition/independent-sector-regulators.htm>

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Croatia

1. Both competition law and regulation aim for similar ends, though particular industries, most notably financial services, energy, media, electronic communications and postal services have sector-specific regulation.
2. In Croatia sector specific regulators are the Croatian Financial Service Supervisory Agency (HANFA), the Croatian Energy Regulatory Agency (HERA), the Croatian Regulatory Authority for Network Industries (HAKOM), and the Agency for Electronic Media (AEM).
3. Sector-specific regulation is characterized by an ex ante intervention of the authorities in the markets concerned.
4. The Croatian Financial Services Supervisory Agency is a supervisory body whose scope of activities and competence cover the supervision of financial markets, financial services and supervised entities providing those services.
5. The HANFA exercises supervision of business operations of stock exchanges and regulated public markets, companies authorised to provide investment services and perform investment activities, investment firms and securities issuers, brokers and investment advisors, tied agents, central clearing and depository company, insurance and reinsurance companies, insurance and reinsurance intermediaries, investment and pension fund management companies, pension insurance companies, investment and pension funds, Central Register of Insured Persons, Fund for Croatian Homeland War Veterans and Members of their Families, Retired Persons' Fund and legal persons carrying out leasing and factoring operations unless they are provided by banks as part of their registered activities.
6. The Croatian Energy Regulatory Agency (HERA) is an autonomous, independent and non-profit legal person with public authority to regulate energy activities.
7. The Croatian Regulatory Authority for Network Industries (HAKOM) is a national regulation body for performing regulatory and other activities in the field of electronic communications, postal and railway services.
8. The Electronic Media Agency (AEM) regulates the rights, obligations and responsibilities of legal and natural persons that provide audio and audio-visual media services and services of electronic publications by electronic communication networks, and the interest of the Republic of Croatia in the field of electronic media. It is empowered by the law to protect pluralism and diversity in the electronic media.
9. Some regulators, like HAKOM give an opportunity to real sector to send comments and opinions in majority of analysis and cases. In accordance with provisions of Electronic Communications Act (ECA), before adopting a measure with significant impact on the relevant market, which is adopted pursuant to the provision of ECA, the HAKOM shall publish proposal for the measure together with the accompanying explanation for the purpose of public consultation, in order to enable all interested parties to give their opinions, comments and proposals on the proposed measure. After public consultation is closed, the HAKOM shall publish all the received opinions, comments and proposals and it may set an additional time limit for the comments of interested parties on the received opinions, comments and proposals, before adopting the decision on the measure.

10. Under Article 6 of the ECA, the application of provisions of this Act shall not influence the scope and competence of the competition authority established in accordance with a special law. Furthermore, in the implementation of the provisions of ECA, the HAKOM shall cooperate with the competition authority in such a manner that it requests the opinion of this authority or proposes the institution of proceedings before competition authority in all cases of prevention, restriction or distortion of competition, in accordance with a special law regulating competition protection. In the application of regulations, the HAKOM shall provide adequate expert and technical assistance to competition authority.

11. According to provisions of the ECA, undertakings with significant market power and undertakings who have been granted licences to use radio frequencies are obligated to notify the HAKOM of any intention to merge or consolidate or of any other type of joint or coordinated action, without regard for whether the turnover thresholds set out in Competition Act are met. Prior to the implementation of any such operation, the HAKOM must issue an approval. If the merger also fulfils all conditions from Competition Act, including thresholds, a notification also has to be filed with the Croatian Competition Agency. In the course of the proceeding, the CCA may invite the HAKOM to comment on the case.

12. All undertakings on all markets are subject to obligatory notification of a concentration in line with Article 15 of the Croatian Competition Act and the Regulation on notification and assessment of concentrations.

13. As an exception, in the **media sector**, pursuant to the Media Act media publishers – parties to the concentration are obliged to notify any media merger to the CCA in the case of a change of control on a lasting basis within the meaning of competition rules but regardless of the legally stipulated total turnover thresholds. The CCA assesses such concentrations exclusively in the sense of competition rules.

14. The CCA takes its decision only after the Electronic Media Agency assess the merger between merging parties as “admissible” in the sense of the special provisions of the Electronic Media Act. Here it must be noted that within the meaning of competition rules in the media sector the notifying party must submit to the CCA also the previous clearing decision of the Electronic Media Agency, that is empowered by the law to protect pluralism and diversity in the electronic media and to control the implementation of other provisions under the Electronic Media Act, such as the ones regulating the programme principles and giving concessions for the provision of the broadcasting services as well as the permission for any programme revisions.

15. The CCA has been particularly concerned about the rise in unnotified concentrations in the electronic **media** sector in 2017. To be precise, the number of concentrations that have not been previously notified to the CCA has doubled since 2016, but what is more, recidivism - where parties in the media sector who have already been fined for the same infringement, choose not to make a voluntary merger notification is on the rise, too. This is a clear sign that the legislative framework regulating the media mergers should be revised (in particular the Media Act) or the CCA should be empowered to impose higher fines on the undertakings in the media sector. Given the rather low total turnover of the undertakings in the sector, the fines amounting to 1% could be an insufficient deterrence for this infringement.

16. Croatian Capital Market Act stipulates that if an investment firm is involved in the process of merger or division of the firm, it must obtain authorisation from the HANFA for such merger or division.

17. The CCA cooperate with sector-specific regulators and judicial and other authorities in competition related cases.

Article 66 (Competition Act)

(1) The Agency shall cooperate with the competent judicial, regulatory and other authorities in resolving the cases in respect of undue distortions of competition in the territory of the Republic of Croatia.

(2) Upon a written request of the Agency, the competent ministry of interior shall free of charge assist the authorised persons in the conduct of surprise inspections and/or temporary seizure of objects and/or documentation referred to in Articles 42 to 46 of this Act.

(3) Upon the written request of the Agency referred to under Article 41 of this Act all central administration authorities, public authorities in compliance with separate rules and local and regional self-government units shall free of charge submit to the Agency any requested data and documentation, including the data and documentation covered with business secrecy obligation, regardless of the specific rules regulating confidentiality. The Agency shall treat such data and documents in line with Article 53 of this Act.

18. Unlike these regulators whose jurisdiction for ex ante control is limited to the relevant sector, the Croatian Competition Agency has the sole authority to carry out ex post antitrust proceedings in „all the sectors regardless of the fact whether there is a specific regulator in the market concerned or not“.

19. The CCA proposed to the Ministry of the Economy, Entrepreneurship and Crafts at the end of 2017 the adoption of the amendments to the Competition Act and drafted the text of the proposed revisions with the purpose of defining the status of the CCA as an autonomous and independent legal person performing the activities of a general national regulatory authority in the area of competition in charge of all markets within the scope and in line with the competences defined by the Competition Act. This is necessary on the account of the fact that even though the existing Competition Act implies that the CCA is a national regulatory authority in charge of competition in all markets, it fails to provide an explicit definition of the CCA as a national and general regulatory authority in charge of competition issues on all markets

20. The co-operation between the Croatian Competition Agency and the above mentioned regulators proves indispensable relating to competition issues in these sectors. Co-operation is carried out through regular exchange of data, information and documentation, issuing of expert opinions for the other party to the agreement in question, and permanent and direct contacts between the parties. A separate provision regulates the secrecy obligation relating to the use the exchanged confidential data, information and documentation, as well as receiving of confidential data from third parties, to be used exclusively for the purpose of carrying out investigation proceedings in competition cases.